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COMMITTEE ON THE PEACEFUL
USES OF OUTER SPACE

REVIEW OF THE STATUS OF THE FIVE INTERNATIONAL LEGAL INSTRUMENTS GOVERNING OUTER SPACE

Note by the Secretariat

Addendum

CONTENTS

	Page
INTRODUCTION	2
REPLIES RECEIVED FROM MEMBER STATES	3
Austria	3
Germany	5

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INTRODUCTION

1. The General Assembly, upon the recommendation of the Committee on the Peaceful Uses of Outer Space, has so far adopted five international treaties and five sets of legal principles regarding the exploration and peaceful uses of outer space.

2. At its fortieth session, the Committee noted that the Legal Subcommittee had continued to conduct its informal consultations with a view to coming up with a list of annotated items agreed upon by consensus that could be considered by the Committee for possible inclusion in the agenda of the Subcommittee (A/52/20, paragraph 128). The Committee endorsed the recommendation of the Legal Subcommittee that, on the basis of its informal consultations, a new agenda item entitled "Review of the status of the five international legal instruments governing outer space", dealt with in document A/AC.105/C.2/L.206/Rev.1, should be included in the agenda of the Legal Subcommittee starting with its session in 1998.[1] The Committee agreed that in order for the Legal Subcommittee to begin implementing the work plan contained in document A/AC.105/C.2/L.206/Rev.1 at its thirty-seventh session in 1998, the Secretariat should invite Member States to submit their views regarding the obstacles impeding the ratification of the five international legal instruments governing outer space.

3. The Secretary-General sent a note verbale dated 14 July 1997 to all Member States inviting them to communicate their views on the matter to the Secretariat by 1 October 1997. The replies would enable the Secretariat to prepare for submission to the Legal Subcommittee at its thirty-seventh session a compilation of the views of States regarding obstacles that have impeded the ratification of the five international legal instruments governing outer space.

4. Information received from Member States by 20 February 1998 is contained in document A/AC.105/C.2/L.210. That document also provides a basic historical background on each of the five legal instruments, an analysis of the replies received on the matter as well as a selected bibliography of United Nations documents and other relevant sources of information on the five instruments.

5. The present document was prepared by the Secretariat on the basis of additional information received from Member States between 21 February and 7 May 1998.

Notes

[1] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 20* (A/52/20), para. 130.

REPLIES RECEIVED FROM MEMBER STATES[1]

Austria

[Original: English]

With reference to the new item on the agenda of the Legal Subcommittee on the Peaceful Uses of Outer Space entitled "Review of the status of the five international treaties governing outer space", as proposed by the Government of Mexico and elaborated in document A/AC.105/C.2/L.206/Rev.1, of 4 April 1997, Austria wishes to make the following comments:

Austria is party to all five international instruments governing outer space, namely:

Instrument	*Date of ratification and/or accession by Austria*
Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967 Outer Space Treaty)	26 February 1968
Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (1968 Rescue Agreement)	19 February 1970
Convention on International Liability for Damage Caused by Space Objects (1972 Liability Convention)	10 January 1980
Convention on Registration of Objects Launched into Outer Space (1975 Registration Convention)	6 March 1980
Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (1979 Moon Agreement)	11 June 1984

A. General remarks

Austria has always attached great importance to the codification of international law and has consistently undertaken and supported efforts aimed at enhancing the effective and just operation of international legal norms. The fact that the five treaties mentioned above have not received global acceptance (this is particularly true of the Registration Convention of 1975 and the Moon Agreement of 1979) is of considerable concern. Austria, therefore, welcomes an analysis of the reasons for this low rate of ratification, as proposed by Mexico.

In this context Austria would like to limit its remarks to the Liability Convention, as there seems to be a very simple way of significantly enhancing the effectiveness and credibility of that Convention without changing its text. As will be shown below this could be achieved without going through the arduous process of multilateral negotiations.

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[1]The replies are reproduced in the form in which they were received.

B. The Liability Convention

Austria regards the Liability Convention as a cornerstone for the safety and credibility of international space flight. Its concept of absolute and unlimited State liability for damages caused by space objects on the Earth's surface or to aircraft in flight is exemplary in international law. Although many States seem to share this view in general, as borne out by the relatively high rate of ratification, there is a point regarding the status and scope of application of the Convention which Austria believes to be of great importance and to which it wishes to draw the attention of other States.

According to article XIV of the Liability Convention "if no settlement of a claim is arrived at through diplomatic negotiations as provided for in Article IX, within one year from the date on which the claimant State notifies the launching State that it has submitted the documentation of its claims, the parties concerned shall establish a Claims Commission at the request of either party".

According to article XIX of the Liability Convention "the decision of the Commission shall be final and binding if the parties have so agreed; otherwise the Commission shall render a final and recommendatory award, which the parties shall consider in good faith".

The Claims Commission's decision is, therefore, not automatically binding. As all of those involved in the drafting of the Liability Convention will undoubtedly recall, the reasons for the compromise contained in article XIX, paragraph 2, of the Liability Convention—i.e. the fundamentally non-binding character of the Claims Commission's decision unless the parties involved have agreed otherwise—were primarily historical and have to be viewed within the context of the former East-West dichotomy.

Austria believes that due to the fundamental change in international relations, the question of the binding character of the Claims Commission's decision should be seriously considered. This would not necessarily involve amending the Convention.

Operative paragraph 3 of resolution 2777 (XXVI) adopted by the General Assembly of the United Nations on November 1971 provides for a declaration by States Parties to recognize as binding, in relation to any other State accepting the same obligation, the decision of a Claims Commission in any dispute between itself and the other State Party. Along with Canada, Denmark, Greece, Ireland, New Zealand, Sweden, Norway and the Netherlands, Austria has in fact made such a declaration in 1980. Austria believes that such declarations by States parties enhance the effectiveness and credibility of the Liability Convention. Moreover, making the Claims Commission's decisions binding on a reciprocal basis would also be in keeping with more recent developments in international law doctrine and particularly international environmental law.

Austria would, therefore, welcome it if other States were to seriously consider making such a declaration, especially in view of UNISPACE III.

In Austria's view, this would be a way of improving the liability regime as it applies to damage caused by space objects without having to amend the Convention itself.

Germany

[Original: English]

With reference to the agenda item of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space entitled "Review of the status of the five international treaties governing outer space" and the note verbale dated 14 July 1997 sent by the Secretary-General to all Member States inviting them to communicate their views on the matter, Germany submits therewith some considerations regarding the five international treaties governing outer space.

A. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies (Outer Space Treaty)

1. Review/comments

From the point of view of spacefaring as well as from the point of view of international law, Germany regards the Outer Space Treaty as the "Magna Charta" of space law. This international legal instrument has set the cornerstones for the exploration and use of outer space until the present time, as well as for any other legal instrument applicable to space activities. Of course the wording of the Outer Space Treaty reveals that this text has been drafted thirty years ago and that its foundation is often a theoretical one. The exploration and use of outer space belongs to the field of high technology, and the authors of the Outer Space Treaty did not have the practical knowledge, which we possess today. Still, the legal rules of this treaty have not lost any of their impact. On the contrary, it is unlikely that principles of such far-reaching consequences in connection with the peaceful uses of Outer Space and freedom of Outer Space could be formulated and adopted today as they are expressed in articles I to IV of the Outer Space Treaty.

Article VI of the Outer Space Treaty is also of extraordinary importance, i.e. the article about "international responsibility of national activities in Outer Space, whether such activities are carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present (Outer Space) Treaty". Even now, more than thirty years after the adoption of this article, we acknowledge its utmost importance and are of the opinion that it is imperative that this article will remain one of the fundamental principles upon which international exploration and use of Outer Space is based and should take place. The same is true for article VII on international liability.

In view of the new problem of "space debris", which was absolutely unknown when the Outer Space Treaty was elaborated, article IX of the Outer Space Treaty receives special meaning and should be possibly studied in the Legal Subcommittee, after the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space has completed its five-year study on space debris and adopted the final report.

2. Status

The Outer Space Treaty was ratified by Germany on 10 February 1971. Since Germany regards the Outer Space Treaty as the cornerstone of space law, it is satisfactory that an overwhelming number of States have either ratified or signed the Outer Space Treaty.

B. Convention on International Liability for Damage Caused by Space Objects (Liability Convention)

1. Review/comments

In the opinion of the German Government there is a set of international regulations which is so important and well elaborated that in case it was not already existing it should definitely be invented at once. This Convention provides an optimal legal protection with regard to eventually malfunctioning space objects re-entering the Earth's atmosphere and it is unprecedented in international law. One of its most remarkable features is its article II, which sets up absolute State liability for the case that damage is caused by a space object on the surface of the Earth or to aircraft in flight. This means that the launching States, which are identified in article I, are absolutely liable for the case worded in article II and have to pay compensation. The victim does not have to prove fault or negligence of the launching State. According to article II, the launching State or States carry absolute liability in case of an accident, which means that they have to compensate for all damage, without proof of fault or negligence (exceptions covered in articles VI and VII). It is of course a hardship that such damages are not insurable as the range of damage cannot be estimated. This, however, makes spacefaring acceptable for humanity on Earth and international aviation. A launching State is expected to be able to compensate eventual enormous damage (for the population on Earth or international civil aviation), which would not in the same way be granted in case of liability of private persons. The State is expected to be solvent in these dimensions in comparison to private persons and entities.

As for the Outer Space Treaty, we consider this Convention to be one of the cornerstones for the safety and credibility of international space flight. Through space flight a new concept of neighbouring State has developed. In terrestrial law neighbours are usually those whose territories border each other. In space law the neighbour is practically each country on Earth. A satellite completes a full Earth orbit within 90 minutes, so that in case of an accident even a very remote country can be affected and would therefore in terms of environmental space law be the neighbour of the respective launching State.

The new problem of space debris was absolutely unknown when the Liability Convention was elaborated and it should be possibly viewed again in this respect in the Legal Subcommittee, after the Scientific and Technical Subcommittee has completed its five-year study of space debris and adopted the final report. Then the Legal Subcommittee should decide how far these results have impact on the Liability Convention and if it should be complemented by a new legal instrument which would be supported by new additional facts, based on our present standard of knowledge. In this connection the Liability Convention should of course remain unaltered. But possibly, additional legal norms, either in the form of a catalogue of principle which could be adopted in a United Nations resolution, as standard recommended practice, or as a new binding legal instrument or protocol amending the Liability Convention and dealing with space debris.

There is a problem which space lawyers point out in connection with the Liability Convention with regard to the Claims Commission which shall decide in cases of international disputes as mentioned in article XIV. This problem lies in the fact that the decision of the Commission is only final and binding if the parties have *so agreed*. Otherwise the Commission can only render a final and recommendatory award to be considered by the parties in good faith (article XIX, paragraph 2). However, such a declaration with respect to the binding force of the Claims Commission's award can be submitted to the Untied Nations Secretary-General already with the ratification of the Liability Convention. Thereby, the Commission's award could already be recognized *before* an international dispute has arisen. Since only a few States have recognized as binding, in relation to any other State accepting the same obligation, the decision of the Claims Commission, this matter deserves further study.

2. Status

The Liability Convention was ratified by Germany on 18 December 1975. It is noteworthy that the Liability Convention has been ratified or a notice of accession has been placed by around 70 States.

C. Convention on Registration of Objects Launched into Outer Space (Registration Convention)

The views of the German Government with respect to this Convention were stated in the working paper submitted by Germany on behalf of Austria, Belgium, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland (A/AC.105/C.2/L.211/Rev.1 of 30 March 1998, Section III).

D. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement)

1. Review/comments

Among the other space law instruments which are mostly concerned with technical and legal matters, the Rescue Convention is a document which shows care for the people directly involved in space flight. Of course, we fully agree with the humanitarian issues stated in the articles of the Rescue Convention. Still, this instrument has so far never found practical application. Scientific space flight and especially manned space flight find great popularity worldwide and make many space mission issues of international interest, as could be seen in the case of the Mir projects and the United States Space Shuttle flights. The media were highly involved in the distribution of information not only to specialists but to the general public as well. In this light, most of the issues of the Rescue Convention provide rules for action which could be trusted to take place in case of emergency already under less regularized circumstances. Against the background of the present situation, the Rescue Convention can be revealed as a product of a different political situation. Nevertheless, times are changing constantly and it is definitely valuable to possess a legal instrument which provides for international relationships and projects which might be less open and trusting than at the moment. Still, the reality of space flight as we can view it today does not seem to make the Rescue Convention an instrument which has great practical impact or would require any sort of revision at this time.

2. Status

The Rescue Convention was ratified by Germany on 17 February 1972. The number of ratifications of the Rescue Convention is quite satisfactory.

E. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Agreement)

1. Review/comments

For Germany, the impact of the Moon Agreement lies especially in its focus on the *exploitation* of the Moon and other Celestial Bodies by all States Parties. The Outer Space Treaty contains the view of almost thirty years ago, focusing on the *exploration* and use of outer space. Then it was almost unimaginable to use the Moon and other celestial bodies more intensively, e.g. to exploit natural resources of the Moon and other celestial bodies. Article 11 of the Moon Treaty stresses that the Moon is common heritage of mankind and the

exploitation of the natural resources of the Moon has to be undertaken under an international regime. This international regime has to include, according to article 11, paragraph 7, the following:

"(a) The orderly and safe development of the natural resources on the moon;

(b) The rational management of those resources;

(c) The expansion of opportunities in the use of those resources;

(d) An equitable sharing by all States Parties in the benefits derived from those resources, whereby the interests and needs of the developing countries, as well as the efforts of those countries which have contributed either directly or indirectly to the exploration of the moon, shall be given special consideration."

The last paragraph is especially important. Such an international regime has so far not been established because there are no existing projects which have found practical application. Anyhow, if such projects should become real, we believe that the rules of the Moon Treaty are important.

As to article 7 of the Moon Treaty, this is a rule for the protection of the environment, which is concerned about the protection of the Moon and other Celestial Bodies and the existing balance of their environment, as well as about the protection of the Earth, i.e. to avoid harmfully affecting the environment of the Earth through the introduction of extraterrestrial matter or otherwise. Especially with a view to the issue of space debris, the possible impact of this article, in particular its paragraph 2, on the environment should be more carefully studied and assessed.

Article 7, paragraphs 1 and 2, read as follows:

Article 7

"1. In exploring and using the moon, States Parties shall take measures to prevent the disruption of the existing balance of its environment, whether by introducing adverse changes in that environment, by its harmful contamination through the introduction of extra-environmental matter or otherwise. States Parties shall also take measures to avoid harmfully affecting the environment of the earth through the introduction of extraterrestrial matter or otherwise.

2. States Parties shall inform the Secretary-General of the United Nations of the measures being adopted by them in accordance with paragraph 1 of this article and shall also, to the maximum extent feasible, *notify him in advance of all placements by them of radio-active materials on the moon and of the purposes of such placements*" (emphasis added).

Although environmental matters are mentioned here, these paragraphs still show that the general assessment with respect to the protection of the space environment at the time of the Moon Treaty's adoption (1979) could be summed up by technical laymen polemically as "outer space is an environment which is huge and empty". So its environmental problems as a "nuclear waste disposal" area did not take the scope that waste and pollution did on Earth. The problem that such nuclear waste has to be launched into outer space (before it can be disposed of) and that the risk of launching failures are conservatively assessed by all great spacefaring nations as realistically being approximately between 15 and 20 per cent did evidently not concern the authors of the Moon Treaty enough to block consensus on the matter or to elaborate a more acceptable solution. The horrible scenario in case that such nuclear material was to fall back to the Earth—possibly on the territory of a State which is *not* responsible for the launching—did not seem to have bothered the drafters of the

above-mentioned article either. In this connection, it is important to know that accidents which are due to the so-called launching failures do not only include cases when e.g. the payload explodes on the satellite's launching pad and pollutes the territory of a launching State. They also include all cases in which the payload does not reach its proper destination—this can also be due to an unscheduled re-entry into the Earth's atmosphere after the payload has already half orbited around the Earth.

In this connection it has to be pointed out that at the time of the elaboration of the Moon Treaty the question of environmental protection was clearly secondary. During the Cold War such issues as peaceful vs. military uses of outer space, the sharing of resources and State responsibility as well as the liability of States for space activities were the predominant ones. As to the last two issues, it has to be emphasized that they have been solved so well, at least in their fundamental features, that even today a better concept with respect to the responsibility of the launching State as well as its liability for damage caused by space objects could not be elaborated. It can even be doubted whether such regulations had a realistic chance to be adopted by consensus in the United Nations today.

Article 7, paragraph 2, of the Moon Treaty is, against the background of the present technical and scientific knowledge, in the view of the German delegation, very weak in protecting the environment.

2. Status

Like many States who are involved in Space activities, Germany has not yet ratified the Moon Agreement, since the *exploitation* of the Moon and other celestial bodies has not yet entered a concrete stage. Germany welcomes the fact that the questions of exploitation of the Moon and other celestial bodies and not only the issues of exploration and use of outer space for peaceful purposes as they are laid down in the Outer Space Treaty have been legally codified, even though we do not deem it necessary at the moment due to the lack of practical applications to ratify the Moon Agreement.